IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 944 of 2007(K)

PETITIONER:

P.MATHEW,
PROPRIETOR, CHENKULATHU CASHEW FACTORY,
VALAKAM P.O., KOTTARAKKARA.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT:

THE INTELLIGENCE INSPECTOR,
SQUAD NO.1, COMMERCIAL TAXES,
KOLLAM.

BY GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

W.P.(C) NO. 944 OF 2007

Dated this the 10th day of January, 2007

J U D G M E N T

Petitioner challenges Exhibit P3 notice and seeking to quash the same by issuing a writ of certiorari. He also seeks for an interim relief to release the goods covered by Exhibit P3.

2. The petitioner is a registered dealer in cashew kernel under the K.V.A.T Act and C.S.T. Act on the files of the Assistant Commissioner (Assessment), Commercial Taxes, Kollam. The respondent detained the goods despatched to a Delhi party on consignment agreement for sale under the cover of F Form to be supplied by the Delhi party. The goods were detained and Exhibit P3 was issued requiring the petitioner to pay security amount of Rs.1,03,125/-, in the alternative to show cause as to why the goods shall not be detained. The reasons stated in Clause viii would show that the vehicle containing the goods was intercepted on 29/12/2006 and the goods are send from M/s.Chenkulathu Cashew Factory, Valakam, Kottarakkara to M/s.Aditya Sales Corporation, Naya Bazar, Delhi on F form sales. On verification of the website of the consignee, it was ascertained that the

consignee has no dealing in cashew kernels. This is the reason for raising the suspicion. Petitioner has produced Exhibit P6 issued by the office of the Value Added Tax Officer, Ward No.28, Department of Trade and Taxes, Delhi certifying that M/s.Aditya sales Corporation, Naya Bazar, New Delhi is a registered dealer of Ward 28, Department of Trade and Taxes, Vyapar Bhavan, I.P.Estate, New Delhi. It has further certified that the firm deals in foodgrain, dry fruit (kaju) and kiryana goods and other goods. If the certificate produced by the petitioner is in any way found to be suspicious, nothing prevented the officer from enquiring the same with the office who issued Exhibit P6 regarding its veracity. No such attempt was made. Further prima facie the genuineness of Exhibit P6 cannot be doubted. Further for effecting an inter state sale, Section 6 as such does not insist that it should be always to a registered dealer. However, if any claim is made based on the 'F' form so issued by the consignee, it is open to the assessing authority to consider the same.

3. In such circumstances, there will be a direction to release the goods covered by Exhibit P3 on the petitioner furnishing a bond without sureties.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp